

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-168-SB of 2004

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Date of decision:1.3.2018

Pankaj Kumar

...Appellant

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Naresh Kumar, Advocate for the appellant.

Mr. Arjun S. Yadav, Assistant Advocate General, Haryana
for the respondent-State.

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Inderjit Singh, J.

Pankaj Kumar-appellant has filed this appeal challenging the impugned judgment of conviction and order of sentence dated 18.12.2003 passed by learned Additional Sessions Judge, Panipat, whereby he has been held guilty and convicted for the offences punishable under Sections 411, 463 punishable under Section 465, 466, 468 and 471 IPC. He has been sentenced to undergo rigorous imprisonment for two years for the offence under Section 411 IPC; to undergo rigorous imprisonment for one year under Section 465 IPC; to undergo rigorous imprisonment for five years and to pay a fine of ₹5,000/- and in default of payment of fine to further undergo simple imprisonment for one year for the offence under Section 466 IPC. He has also been sentenced to undergo rigorous imprisonment for three years and to pay a fine of ₹2,000/- and in default of payment of fine to

further undergo simple imprisonment for six months for the offence under Section 468 IPC. He has also been sentenced to undergo rigorous imprisonment for five years and to pay a fine of ₹5,000/- and in default of payment of fine to further undergo simple imprisonment for one year for the offence under Section 471 IPC. All the sentences have been ordered to run concurrently.

The brief facts of the prosecution case are that the FIR No.129 dated 12.4.2001 in the present case has been lodged on the statement of Braham Jeet-complainant, who stated that on 12.4.2001 at about 12 O'Clock, he had gone to Dr. M.K.K. Arya Model School, Model Town, Panipat to bring back his son Manav Saini. He was on car make Alto LX A/F silver colour. The said car belonged to one of his relatives, namely, Naresh Kumar. After parking his car outside the school, he had gone inside. When he came back, he opened the door of the car and asked his son to sit on the front seat, meanwhile a boy came there and asked him to give key of car on pistol point and thereafter he occupied Driver's seat. there came two other boys. They were also armed with pistols. They also occupied the car. They started the car and left with the same. All three boys were young and were speaking Haryanvi. He could identify them. On the basis of this report, the above FIR was registered.

During the investigation of the case FIR No.136 dated 9.6.2001 registered for the offences under Sections 399 and 402 IPC at Police Station, Madlauda, accused Vikram Vats made a disclosure statement that he along with Hari Parkash and Jitender had snatched a Maruti car at pistol

point from near M.K.K. Arya School, Model Town, Panipat. They had sold it to Pankaj-appellant for ₹50,000/-. Pankaj also made a disclosure statement that he had purchased a Maruti car make Alto without number from accused Vikram for ₹50,000/- and had got prepared the forged bill of this car from Surinder alias Somi. On 6.8.2001, accused Jitender made a disclosure statement that he had snatched an Alto car from Model Town, Panipat and had sold the same to Pankaj for ₹50,000/-. Hari Parkash also made similar disclosure statement. After completion of the investigation, challan was presented in the Court.

On presentation of challan, the trial Court finding prima facie case that all accused had committed the offences under Sections 120-B and 397 IPC read with Section 120-B IPC and that accused Jitender had committed the offence under Section 25 of the Arms Act; accused Vikram, Jitender and Hari Parkash had committed the offences under Sections 412 and 420 IPC; accused Pankaj, Sunil and Sanjay had committed the offences under Sections 467, 468 and 471 read with Section 120-B IPC, framed charges accordingly, to which they pleaded not guilty and claimed the trial.

Since the Court was of the view that the charges in this case had not been correctly framed, vide order dated 17.12.2003, it was ordered that the charges be amended. Accused Vikram, Hari Parkash and Jitender were charged under Section 392 read with Section 397 IPC; accused Pankaj, Sunil and Sanjay were charged under Section 463 punishable under Section 465 IPC; accused Pankaj was charged under Section 411, 466, 468, 471 IPC and accused Jitender was charged under Section 25 of the Arms Act, to

which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Barinder Singh; Mohinder Singh PW-2; Brahamjit Saini PW-3; Madan Lal Sethi PW-4; ASI Rajbir Singh PW-5; HC Surinder Singh PW-6; SI Rattan Singh PW-7; Rajinder Singh Ahlawat, Tehsildar PW-8; Constable Rishi Pal PW-9; SI/SHO Naresh Kumar PW-10; Constable Satyawar PW-11; HC Jai Narain PW-12; Inspector Dhian Singh PW-13 and ASI Ram Niwas PW-14. Apart from this, Constable Inder Singh, HC Bijender Singh, SI Pawan Kumar, Ram Phool and Constable Krishan were given-up by Public Prosecutor being unnecessary.

At the close of prosecution evidence, the accused-Pankaj Kumar was examined under Section 313 Cr.P.C and was confronted with the evidence of the prosecution but he denied the correctness of the evidence and pleaded himself as innocent.

After going through the evidence and material placed on record, the learned trial Court vide impugned judgment and order convicted and sentenced the accused-appellant as stated above. Aggrieved from this judgment, appellant-Pankaj Kumar has filed this appeal.

I have heard learned counsel for the appellant and learned Assistant Advocate General, Haryana appearing for the respondent-State and have gone through the record.

A perusal of the record shows that the only allegation against the present appellant is that he had received stolen property i.e. the car in question and he has forged some documents to get the registration in his

name. A perusal of the evidence on record shows that first of all any disclosure statement made by the accused without getting recovered or discovery of any fact is inadmissible in evidence and hit by Section 25 of the Evidence Act. As per the evidence on record, the present appellant had got recovered the Maruti car as well as its RC from his house in view of his disclosure statement which is admissible evidence under Section 27 of the Evidence Act. If only this evidence is seen, then the offence under Section 411 IPC is proved against appellant Pankaj Kumar. As regards forging of documents etc., there is no cogent evidence on record against the present appellant. PW-1 Barinder Singh, who was posted as Licence Clerk in the office of S.D.M., Ganaur, deposed that on 11.5.2001, one Anil son of Vijay Singh had produced certain documents for registration of Maruti Alto car LX bearing Engine No.4017120, Chassis No.118299. The car had been purchased from Batra Auto Company, Mathura Road, Faridabad. This witness nowhere says that present appellant Pankaj Kumar had produced these documents. PW-2 Mohinder Singh deposed that on 18.6.2001, he was posted as Assistant Superintendent in S.D.M. Office, Ganaur. On the same day, Barinder Singh, Licensing Clerk, S.D.M. Office, Ganaur had produced documents pertaining to the Alto car LX bearing registration No.HR-42-4550 having Engine No.4017120, Chassis No.118299 before ASI Ram Niwas in his presence and the same were taken into possession vide memo. PW-3 Brahamjit Saini-complainant deposed regarding the occurrence of snatching the car etc. but he had not identified any of the accused and stated that none of the accused persons in the Court was amongst the said robbers

and he was got declared hostile by the Public Prosecutor. PW-4 Madan Lal Sethi mainly deposed regarding the sanction order of the District Magistrate. PW-5 ASI Rajbir Singh deposed regarding recording of the formal FIR. PW-6 HC Surinder Singh, who was posted as Armourer in Police Lines, Panipat, deposed that on that day, ASI Om Parkash had moved an application along with Pistol for testing. After testing the same, he had prepared his report Ex.PC/1. He had found the pistol in working order. However, no test fire was done. PW-7 SI/SHO Rattan Singh mainly deposed regarding the arrest of accused Rakesh, Suraj Mal, Vikram and Pankaj in case FIR No.136 dated 9.6.2001 registered for the offences under Sections 399 and 402 IPC and Section 25 of the Arms Act at Police Station, Madlauda. He deposed regarding the disclosure statements. As already discussed, the disclosure statement/confession made before the Police is inadmissible in evidence and hit by Section 25 of the Evidence Act as nothing had been recovered as per this disclosure statement. PW-8 Rajinder Singh Ahlawat, Tehsildar deposed that one Anil son of Vijay Kumar had come along with Ram Phool Singh, Advocate, to his office for getting his affidavit attested. PW-9 Constable Rishi Pal is a formal witness, who tendered in evidence his affidavit Ex.PH. PW-10 SI/SHO Naresh Kumar deposed regarding preparing of report under Section 173 Cr.P.C. PW-11 Constable Satyawan mainly deposed regarding disclosure statement made by Pankaj before ASI Ram Niwas in his presence and in the presence of Constable Inder Singh to the effect that he had concealed a forged registration certificate at his residential house in an almirah and that he

could get the same recovered. He deposed that the disclosure statement of Pankaj is Ex.PJ, which was signed by the accused and by him and Constable Inder Singh. This witness has only proved the disclosure statement regarding the RC. PW-12 HC Jai Narain deposed regarding the recovery of the RC of the Alto car. A perusal of the statements of these two witnesses shows that PW-11 is only deposing regarding the disclosure statement whereas PW-12 is not stating anything regarding disclosure statement but simply saying that he got RC of the car. PW-13 Inspector Dhian Singh is the Investigating Officer, who also deposed regarding the recovery of Alto car etc. PW-14 ASI Ram Niwas deposed regarding the disclosure statement regarding forged RC and its recovery.

A perusal of the evidence shows that there is nothing to show that the accused had forged his RC. As per evidence, Anil had gone to the office of the SDM and produced the forged documents for getting RC etc. There is no evidence that the present appellant had signed any document to get RC prepared. There is also no evidence on record to show that the present appellant was having knowledge that this RC was forged one. As the appellant had received the stolen property, therefore, he has committed the offence under Section 411 IPC. Regarding the commission of the offence under Section 463 punishable under Section 465, Sections 466, 468 and 471 IPC, the prosecution had failed to lead any cogent evidence to prove the commission of these offences by the present appellant.

This FIR is of the year 2001 and for the last 16 years, the present appellant is suffering from the long protracted criminal proceedings.

The present appellant has undergone one year, one month and four days sentence of imprisonment including remission of 15 days out of the total sentence.

Keeping in view the facts and circumstances of the present case and the period of prolonged criminal proceedings against him and being a poor person as argued, his sentence of imprisonment is liable to be reduced for the offence under Section 411 IPC to already undergone.

Therefore, from the above discussion, the present criminal appeal is partly allowed. The impugned judgment of conviction and the order of sentence convicting and sentencing appellant-Pankaj Kumar for the offences under Section 463 punishable under Section 465, Sections 466, 468 and 471 IPC are set aside and he is acquitted of the charges as framed for these offences. The impugned judgment of conviction for the offence under Section 411 IPC is upheld, however, the sentence of imprisonment of appellant-Pankaj Kumar is reduced to already undergone.

The sentence of imprisonment of the appellant was suspended vide order dated 16.4.2004 passed by this Court and he was released on bail. As he is on bail, therefore, his bail bonds and surety bonds shall stand discharged.

March 1, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No